IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 656 OF 1997

1. Smt. Nayana Sham Acharya
2. Kiran Sham Acharya
   Both residing at 2/24, Devendra
   Co-Operative Housing Society Ltd.,
   Thane (East) 400 603. ..Petitioners
   (Org.Applicants)

Vs.

1. Chitranjan R. Roy
2. Mrs. Maya C. Roy
   Both residing at 2/24 Devndra
   Co-Operative Housing Society
   Ltd., Thane (East) 400 603 ..Respondents
   (Org.Respondents)

WITH

WRIT PETITION NO. 5059 OF 2002

Shri Chitranjan R. Roy
Aged 62 years, Occup:Service
R/o, 2/24, Devendra Co-Op.
Hsg. Society Ltd. Kopri,
Thane (E). ..Petitioner
(Org. Plaintiff)

Vs.

1. Smt. Nayana Shyam Acharya
   Aged 63 years, Occu: Houshold,
   R/o Navanath Kuti, Savarkar
   Nagar, Mith Bunder Road,
   Near Khari, Thane (E).
2. Shri Kiran Shyam Acharya
   Aged 38 years, Occup: Service
   R/o C-5, Natraj Co-Op. Hsg.
   Society Ltd. Naupada, Thane. ..Respondents

(Org.Defendants)

Ms. Gauri Godse for Petitioners in CRA No.656/97 and for Respondents in W.P. No.5059/02.

Mr. P.K. Dhakephalkar for Respondent No.1 in CRA No.656/97 and for Petitioner in W.P. No.5059/02.

CORAM: B.H. MARLAPALLE, J.

Date : August 08 & 09, 2005.

ORAL JUDGMENT :

1. The Civil Revision Application has been filed by the applicants before the Competent Authority under the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 (for short "the Bombay Rent Act") for seeking the possession of the suit premises, namely, two rooms, kitchen, one balcony, W.C. and two bath rooms which premises were claimed to have been given on leave and licence basis to late Shri Shankar Rage in terms of an agreement purportedly signed on 17/5/1980 between the present applicants and the said Mr. Raje. It was claimed that some portion of flat no.24 in building no.2, Devendra Co-Op. Hsg. Society Ltd. Bandar Road, Thane (East) was retained by the

applicants and the remaining portion as stated hereinabove was put in possession of late Shri Raje who had agreed to pay an amount of Rs.400/- per month by way of licence fees and he was allowed to use the premises for a period of two and half years as a licensee. In May 1981 the elder son of petitioner no.1 by name Shashank died and his widow raised a dispute in respect of flat no.24. Apprehending that she would create third party interest in the said flat, the applicant no.1 and her husband instituted Special Civil Suit No.144 of 1981 in the court of the learned Civil Judge, Senior Division at Thane and the compromise decree was passed on 7/4/1988 by which the applicant no.1 paid an amount of Rs.50,000/- to her widowed daughter-in-law in consideration of her giving up the claim over flat no.24. Thereafter the flat came to be transferred in the name of the applicant no.1 and her husband. Advocate’s notice was issued against Mr. Raje some time in January 1991 calling upon him to vacate the suit premises. Shri Raje died on 1/3/1991. The present respondent no.2 is the daughter of late Shri Raje and respondent no.1 is her husband and both of them claimed to be residing in the

suit house right from 1980. Notices were issued to the present respondents and they did not vacate the premises. The applicants, therefore, filed an application under Section 13A(2) of the Bombay Rent Act before the Competent Authority for eviction of the respondents and to seek possession of the premises. The said application came to be registered as Application No.12 of 1994 before the Competent Authority and the said application came to be dismissed vide Judgment and Order dated 14/2/1997. The said dismissal is a subject matter of challenge in the revision application.

2. Writ Petition No.5059 of 2002 arises from the Judgment and Order passed by the learned 3rd Joint Civil Judge, Junior Division, Thane in Regular Civil Suit No.838 of 1993 on 16/8/1999. The suit came to be decreed partly. The relief of declaration was rejected and the defendants i.e. the present applicants were restrained from disturbing the possession of the plaintiff, the present respondent no.1, over the suit premises. This decree was

challenged in Civil Appeal No.46 of 2000 by the plaintiff as he was aggrieved by the findings recorded by the trial court to the effect that tenancy rights do not devolve on the plaintiff and his wife on the demise of late Shri Shankar Raje. While dismissing the appeal, the Lower Appellate Court vide its decision dated 14/8/2002 has confirmed the said findings and the order of injunction passed by the trial court came to be quashed and set aside with costs throughout. The suit was decreed to its entirety and one month's time was granted to vacate the suit premises. While admitting the petition, the order of injunction granted by the trial court was continued and that is how the petitioner Shri Chitranjan R. Roy is in possession of the suit premises along with his wife and other family members as at present.

3. Ms. Godse the learned counsel for the landlords also stated that during the pendency of these proceedings, they have instituted Regular Civil Suit No.41 of 2003 for eviction and consequentially to

seek possession of the suit premises. Shri Chitranjan R. Roy is no more and Civil Applications filed in both these proceedings to bring LRs on record have been allowed. The fresh proceedings so instituted by the landlords are still pending.

4. Before the Competent Authority oral evidence was recorded and on behalf of the landlords Smt. Nayana Acharya was examined and on behalf of the licensee/tenants Mr. Chitranjan Roy was examined. As admitted by the landlady in her depositions before the Competent Authority, the suit flat stood in the name of her elder son Shashank who was also member of the Devendra Co-Op. Hsg. Society Ltd. and share certificate was issued in his name only. The suit flat was purchased for an amount of Rs.38,000/- and Shashank had also obtained loan for the suit premises along with other members of the Society in 1971. The building was completed and occupation of the flat was handed over in 1978. Shashank got married in 1977 to Suhasini and both of them had occupied the suit premises. As Shashank subsequently died, the suit

premises fallen vacant and it became the property of the applicant no.1 and her husband under the compromised decree passed in Special Civil Suit No.144 of 1981. Pursuant to the said decree the share certificates also came to be transferred in 1989 in the joint name of the present applicants.

5. It is thus clear that late husband of applicant no.1 did not have the locus standi to sign the purported agreement dated 17/5/1980 with late Shri Shankar Raje in respect of the suit flat or the part of it and consequently present applicants also did not have the locus standi to file an application for eviction till the suit flat was transferred in the name of the applicants. The said transfer has taken effect only in the year 1989 and the applicants to be treated as the landlords of the suit premises only thereafter. Application No.12/1994 was not tenable on the basis of the purported agreement dated 17/5/1980.

5A. Application No.12 of 1994 was filed before the Competent Authority under Section 13A(2) of the Bombay Rent Act. As per the law laid down by this court in

the case of Mr. Afsar Shaikh vs. Mr. P.M. Kaul and anr. reported in **1996(4) ALL MR 715**. Amendment to the Bombay Rent Act by Maharashtra Act No.XVIII of 1987 introduced on 1/10/1987 is not applicable in respect of the licenses created prior to 1/10/1987 and terminated prior to 1/10/1987 or which came to an end by efflux of time prior to 1/10/1987 or such licenses which were not subsisting or existing on 1/10/1987. In the instant case, at the first instance, the applicants could not have filed the application before the Competent Authority on the basis of the purported agreement dated 17/5/1980 as late Shri Shyam Acharya was not the owner of the suit flat when the said agreement was executed or signed by late Shri Shankar Raje, the predecessor of the present respondents and secondly even if it is presumed that the said agreement was subsisting and binding the parties, its tenure of two and half years had expired before 1/10/1987. On either of these counts the application moved under Section 13A(2) of the Bombay Rent Act which was introduced in the said Act by Maharashtra Act No.XVIII of 1987 was not maintainable. Consequently, it has to be held that the Competent

Authority entertained the application without jurisdiction and, therefore, the impugned decision in Application No.12 of 1994 is a nullity in the eyes of law. The Civil Revision Application No.656 of 1997 is, therefore, disposed of with the said observations.

6. The concurrent findings recorded by both the courts below and which is the subject matter of challenge in Writ Petition No.5059 of 2002 are based on the agreement dated 17/5/1980 and it has already been held that late Shri Shyam Acharya was not the owner of the suit flat on the day this agreement was signed by late Shri Shankar Raje. These findings of the courts below regarding the status of the petitioner as licensee are thus based on the document/conveyance which was null and void. On this ground alone the said findings are required to be set aside by allowing the petition.

7. Resultantly, the petition succeeds and the impugned orders passed by the courts below holding

that the original plaintiff was a licensee are hereby quashed and set aside. However, this would not imply that the plaintiff was a tenant of the suit premises and such an issue regarding his status vis-a-vis the landlord will have to be decided in the appropriate proceedings i.e. Regular Civil Suit No.41 of 2003 which is presently pending for eviction. It is further clarified that the said suit will have to be decided on its own merits and without being influenced by this order.

8. Rule in Civil Revision Application No.656 of 1997 is hereby discharged and Rule in Writ Petition No.5059 of 2002 is made absolute in terms of the above order, however, without any order as to costs.

(B.H. Marlapalle,J.)